

# ARKANSAS SUPREME COURT

No. CR 09-59

CLAUDE WALLACE  
Petitioner

v.

CINDY THYER, CIRCUIT JUDGE  
Respondent

Opinion Delivered February 26, 2009

PRO SE PETITION FOR WRIT OF  
MANDAMUS [CIRCUIT COURT OF  
MISSISSIPPI COUNTY,  
CHICKASAWBA DISTRICT, CR 92-85]

PETITION DENIED.

## PER CURIAM

On October 9, 2008, petitioner Claude Wallace filed in the trial court a petition to vacate or set aside a judgment entered against him on July 20, 1992, that reflected petitioner's conviction on charges of kidnapping, rape and burglary and a sentence of life plus 160 years' imprisonment. On January 21, 2009, petitioner filed in this court a pro se petition for writ of mandamus in which he seeks a ruling on the petition to vacate the judgment, alleging that the Honorable Cindy Thyer, Circuit Judge, has failed to act upon the petition in a timely manner.<sup>1</sup>

The petition to vacate the judgment alleged petitioner's actual innocence and included a motion for scientific testing under Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated §§ 16-112-201 – 16-112-208 (Repl. 2006). Judge Thyer attached to her response a copy of an order granting additional fingerprint testing in the matter entered on January 6, 2009. While

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<sup>1</sup> The respondent urges us to dismiss the petition on the basis that it is not signed. While petitioner's signature does not appear directly below the body of the petition, his signature is on the petition following the certificate of service, and also appears on an attached affidavit to proceed in forma pauperis. The petition was not filed in error.

petitioner alleges that the court did not respond to his petition, and the court does not appear to have disposed of the petition as yet, the court has acted on the petition and responded to the motion for testing included in the petition. Because the court ordered additional testing, petitioner has not shown that there has been any undue delay in the court's failure to dispose of the petition.

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark.20, 159 S.W.3d 285 (2004). It is issued by this court only to compel an officer or judge to take some action. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). A petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy when requesting a writ of mandamus. *Thompson v. Guthrie*, 373 Ark. 443, \_\_\_ S.W.3d \_\_\_ (2008). Petitioner has not demonstrated a clear and certain right to the relief he seeks, and we deny the petition for writ of mandamus.

Petition denied.